

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

PEN AMERICAN CENTER, INC.,

Plaintiff,

v.

DONALD J. TRUMP, in his official capacity as President of the United States,

Defendant.

Civil Action No. 18-cv-9433-LGS

**MEMORANDUM OF LAW IN
SUPPORT OF MOTION FOR
LEAVE TO FILE *AMICUS
CURIAE* BRIEF**

INTRODUCTION

The *amici curiae* (“*Amici*”)¹ listed below respectfully submit this Memorandum of Law in support of their unopposed Motion for Leave to File *Amicus Curiae* Brief. A copy of the Proposed *Amicus Curiae* Brief of Tenured Professors in Support of Plaintiff Pen American Center, Inc.’s Opposition to Defendant President Donald J. Trump’s Motion to Dismiss the Amended Complaint is attached as Exhibit A to the Declaration of Richard Schwed.

ARGUMENT

I. This Court Has The Inherent Authority To Allow *Amicus* Participation

There is no governing standard, rule or statute prescribing the procedure for obtaining leave to file an *amicus curiae* brief in the district court. *Lehman XS Trust, Series 2006-GP2 v. Greenpoint Mortg. Funding, Inc.*, 12 Civ. 7935, 2014 WL 265784, at *1 (S.D.N.Y. Jan. 23,

¹ The *Amici* are Ruth Ben-Ghiat, Professor of Italian and History at New York University; Kim Lane Schepppele, the Laurance S. Rockefeller Professor of Sociology and International Affairs at the Woodrow Wilson School and in the University Center for Human Values at Princeton University; Seyla Benhabib, the Eugene Meyer Professor of Political Science and Philosophy at Yale University; Aziz Huq, the Frank and Bernice J. Greenberg Professor of Law at the University of Chicago Law School; and Samuel Moyn, the Henry R. Luce Professor of Jurisprudence and Professor of History at Yale University.

2014). This Court has “broad discretion to permit or deny the appearance of amici curiae in a given case.”” *Micula v. Gov’t of Romania*, No. 15 Misc. 107, 2015 WL 4643180, at *1 (S.D.N.Y. Aug. 5, 2015) (Schofield, J.), (*quoting United States v. Yaroshenko*, 86 F. Supp. 3d 289, 290 (S.D.N.Y. 2015)). *Amicus curiae* submissions should normally be accepted where they provide “unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide.” *Auto. Club of N.Y., Inc. v. Port Auth. of N.Y. & N.J.*, 11 Civ. 6746, 2011 WL 5865296, at *2 (S.D.N.Y. Nov. 22, 2011); *accord Micula*, 2015 WL 4643180, at *1.

II. The *Amici* Offer This Court Historical Perspectives and Insights That Are Not Available From the Parties

The *Amici* here are tenured professors at universities in the United States who have dedicated their academic and professional careers to studying democratic systems and the decline of, and threats to, democracies. As experts in their field, they have studied numerous democratically elected, populist leaders who have employed an autocratic “playbook” to undermine freedom of the press, allowing the leaders to consolidate power and cause democratic “back-sliding” in their respective nations. The proposed *amicus curiae* brief provides this Court with a unique and important perspective on the use of the playbook in other countries, how the playbook has caused the decline of the free press and democracy in those countries, and how President Donald J. Trump is using a similar playbook to stifle the press. The *Amici* have a professional interest in seeing the Court protect the First Amendment and the free press, which historically has played an important role in keeping the government accountable.

III. The Parties Do Not Oppose the Filing of the *Amicus Curiae* Brief

We have conferred with counsel for the parties to the action, and they do not oppose the filing of the proposed *amicus curiae* brief.

CONCLUSION

For the foregoing reasons, the *Amici* respectfully request that the Court grant this Motion for Leave to File *Amicus Curiae* Brief.

Dated: New York, New York
May 10, 2019

SHEARMAN & STERLING LLP

By: /s/ Richard Schwed

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